

**D.R., Appellant**

**U.S. INTERNATIONAL BOUNDARY &  
WATER COMMISSION, El Paso, TX, Employer**

*Case Submitted on the Record*

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

<sup>2</sup> The Board notes that, following the March 12, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP abused its discretion in denying appellant's request for a hearing pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On August 13, 2018 appellant, then a 37-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment, including performing clerical duties and keyboarding. She first became aware of her condition on January 5, 2017 and first realized its relation to her federal employment on April 1, 2017. In an attached statement, appellant noted that she had utilized an "ergonomic keyboard, mouse, and workstation since 2016" and wore bilateral wrist splints while at work.

In a January 5, 2017 report, Dr. Jason Vourazeris, a Board-certified orthopedic surgeon, noted appellant's history of bilateral carpal tunnel symptoms. On examination, he observed a dorsal ganglion cyst on the right wrist.<sup>3</sup> Dr. Vourazeris diagnosed right carpal tunnel syndrome, a ganglion cyst of the right wrist, and osteoarthritis of the left shoulder.

On January 13, 2017 Dr. Vourazeris performed right dorsal ganglion cyst excision and a right carpal tunnel injection. He submitted progress notes dated through May 18, 2017, noting a history of a previous open reduction and internal fixation of the left clavicle.

In a June 27, 2018 report, Dr. Justin S. Mitchell, an osteopathic physician Board-certified in orthopedic surgery, diagnosed bilateral carpal tunnel syndrome and a right ulnar nerve lesion with right cubital tunnel symptoms. He administered an injection to the right carpal tunnel.

In a July 25, 2018 report, Dr. Mitchell made an additional diagnosis of right cubital tunnel syndrome. He opined that high intensity typing at work could exacerbate underlying carpal tunnel syndrome and worsen its symptoms.

In an August 7, 2018 statement, an employing establishment safety officer noted that appellant had been provided an ergonomic desk, chair, keyboard, mouse bar, standing mat, and telephone headset to address her bilateral hand and wrist symptoms.

OWCP, in a development letter dated August 28, 2018, informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence necessary and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

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<sup>3</sup> A December 31, 2016 magnetic resonance imaging scan of the right wrist demonstrated a dorsal ganglion cyst, slight thickening of the right median nerve, minimal first flexor tendon tenosynovitis, borderline second and third extensor compartment tenosynovitis, mild ulnar/volar extensor carpi ulnaris tendon subluxation, and mild bowing of the flexor retinaculum without thickening.

Appellant submitted a completed questionnaire, signed on September 17, 2018 and a summary of medical treatment. She described “constant” typing for 40 hours a week while at work. Appellant provided a September 2, 2016 employing establishment ergonomic evaluation in which she noted bilateral wrist, left shoulder, and back pain when keyboarding at work. OWCP also received an official position description.

By decision dated October 1, 2018, OWCP accepted that the identified work factors occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to those employment factors.

On October 16, 2018 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review, later converted to a request for a review of the written record.

OWCP subsequently received a June 19, 2019 statement from the employing establishment, noting that appellant required ergonomic accommodations when she began work at the employing establishment on August 21, 2016. It confirmed that, during the first six months of 2018, she completed 82 memoranda, 30 letters, 200 reports, 23 technical analyses, assisted with an annual inventory, helped set up meetings and appointments, and made travel reservations. Appellant’s supervisor advised appellant to take leave as needed and to assure that her work did not aggravate her symptoms. The employing establishment also submitted photographs of the ergonomic furniture provided to appellant.

In a July 1, 2019 report, Dr. Mitchell noted bilaterally positive Tinel’s tests at the wrist and at the right elbow, a bilaterally positive Durkin’s compression test, and tenderness to palpation medially over the right ulnar nerve at the elbow. He diagnosed bilateral carpal tunnel syndrome, right greater than left. Dr. Mitchell noted that conservative management had not improved appellant’s symptoms.

By decision dated July 31, 2019, an OWCP hearing representative affirmed the October 1, 2018 decision.

In an August 30, 2019 report, Dr. Mitchell noted administering a right wrist injection. He related that appellant’s job duties included high-intensity typing and repetitive upper extremity motion while performing clerical duties. Dr. Mitchell explained that wrist position and extension while typing and using a computer mouse were known to aggravate underlying carpal tunnel syndrome by increasing pressure within the carpal tunnel and compressing the median nerve. He opined that appellant’s work duties aggravated and worsened her underlying carpal tunnel syndrome.

In a September 16, 2020 report, Dr. Mitchell scheduled appellant for a right ulnar nerve decompression with in situ release and a left carpal tunnel injection. He recommended left ulnar and median nerve decompression to be performed following her recovery from the right upper extremity surgery.

In an October 16, 2020 letter, appellant contended that OWCP had not responded to her prior requests for an oral hearing. OWCP processed the October 16, 2020 letter as a request for an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

By decision dated March 12, 2021, OWCP denied appellant's October 30, 2020 request for an oral hearing. It explained that she was not entitled to a hearing as a matter of right. OWCP also considered whether to grant a discretionary hearing and found that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.<sup>4</sup> Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."<sup>5</sup> The Board has held that OWCP has the discretion to grant or deny a hearing request on a claim when the request is made after the 30-day period for requesting a hearing,<sup>6</sup> when the request is for a second hearing on the same issue,<sup>7</sup> and when the request is made after a reconsideration request was previously submitted.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP did not abuse its discretion in denying appellant's October 16, 2020 request for an oral hearing before an OWCP hearing representative.

OWCP denied appellant's occupational disease claim by decision dated October 1, 2018, finding that the medical record was insufficient to establish causal relationship. On October 16, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, modified to a request for a review of the written record. By decision dated July 31, 2019, an OWCP hearing representative affirmed the October 1, 2018 decision denying appellant's occupational disease claim. On October 16, 2020 appellant again requested an oral hearing before OWCP's Branch of Hearings and Review on the issue of whether she had established her occupational disease claim. As she had a review of the written record on the same issue, under section 8128 of FECA, the Board finds that she was not entitled to an oral hearing as a matter of right under section 8124(b)(1).<sup>9</sup> OWCP properly exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of new evidence.<sup>10</sup> Therefore, the Board finds that OWCP, in its March 12, 2021

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<sup>4</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 8124(b)(1).

<sup>6</sup> *E.R.*, Docket No. 20-1110 (issued December 23, 2020); *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>7</sup> *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>8</sup> *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Id.*

decision, did not abuse its discretion in denying appellant's October 16, 2020 request for an oral hearing.

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion in denying appellant's October 16, 2020 request for an oral hearing before an OWCP hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board